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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

REVIEW OF DEVELOPMENTS CONCERNING RECOMMENDATIONS AND DECISIONS RELATING, INTER ALIA, TO

ENCOURAGEMENT OF UNIVERSAL ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS AND OBSERVANCE OF THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS BY STATES WHICH ARE NOT PARTIES TO UNITED NATIONS HUMAN RIGHTS CONVENTIONS

Observance of human rights by States which are not parties to United Nations human rights conventions

Additional working paper submitted by Mr. V. Kartashkin pursuant to Sub-Commission resolution 1999/28

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Introduction

1. In its decision 1998/115 of 26 August 1998 the Sub-Commission on Prevention of Discrimination and Protection of Minorities, having discussed the question of the fiftieth anniversary of the Universal Declaration of Human Rights and the encouragement of acceptance of human rights instruments, requested Mr. Vladimir Kartashkin to prepare, without financial implications, a working paper on ways in which the Sub-Commission could examine the observance of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights by States not parties to United Nations human rights conventions and to submit it to the Sub-Commission at its fifty-first session.

2. At its fifty-first session the Sub-Commission, mindful of the need to examine further the ways and means of encouraging States to observe the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights and to ratify the principal United Nations human rights conventions, took note of the working paper prepared by Mr. Kartashkin (E/CN.4/Sub.2/1999/29) and, in its resolution 1999/28, requested him to continue his work on the subject, without financial implications, and to submit an additional working paper to the Sub-Commission at its fifty-second session.

3. This additional working paper considers the main issues which have a direct bearing on the mandate of the Sub-Commission. It essentially deals only with matters relating to the observance by States of the fundamental human rights and freedoms proclaimed in the Universal Declaration and reaffirmed in the International Covenants on Human Rights. The proposals made in this additional working paper are based primarily on the discussion which took place during the fifty-first session of the Sub-Commission when it considered this agenda item.

I. RATIFICATION BY STATES OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND OTHER CONVENTIONS CONTAINING THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS PROCLAIMED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

4. As pointed out in the main working paper (E/CN.4/Sub.2/1999/29), all States are now obliged, irrespective of their political, economic and cultural systems, to promote and protect human rights and fundamental freedoms. This universal obligation derives first and foremost from the Charter of the United Nations and the Universal Declaration of Human Rights.

5. The fundamental rights and freedoms proclaimed in the Universal Declaration have been reaffirmed in the International Covenants on Human Rights and in a number of other international conventions. As a result of the customary and treaty practice of States, many of them have acquired the character of jus cogens and have become binding for all countries of the world. Every State is therefore obliged to incorporate these rights into its legislation and to apply them in everyday practice.

6. A list of these rights has been proclaimed in the constitutions and legislative acts of various countries, and repeatedly reaffirmed in the decisions of both universal and regional international organizations [1]

7. The overwhelming majority of States are now parties to international human rights instruments. By the beginning of 2000, 141 States had acceded to the International Covenant on Economic, Social and Cultural Rights, and 144 to the International Covenant on Civil and Political Rights. A total of 153 States had become parties to the International Convention on the Elimination of All Forms of Racial Discrimination, and 112 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Only the Convention on the Rights of the Child has been signed and ratified by virtually all countries. These figures demonstrate that quite a number of States have not yet ratified the principal international human rights instruments and thus have not come under the supervision of the United Nations treaty bodies.

8. The attitude of States towards the ratification of international human rights conventions may be traced in outline with reference to the International Covenants on Human Rights, which have set forth in treaty form a list of the fundamental human rights and freedoms proclaimed in the Universal Declaration.

9. In the late 1970s, the 1980s and the early 1990s, ratification of the Covenants typically proceeded fairly quickly. However, in recent years this process has slowed considerably. Moreover, some States have been informing the Secretary-General of the United Nations of their decision to denounce the International Covenant on Civil and Political Rights and the Optional Protocol thereto.[2]

10. The two International Covenants on Human Rights have not been ratified by:

Andorra, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Bhutan, Botswana, Brunei Darussalam, Burkina Faso, China, Comoros, Cook Islands, Cuba, Djibouti, Eritrea, Fiji, Ghana, Holy See, Indonesia, Kazakhstan, Kiribati, Lao People's Democratic Republic, Liberia, Liechtenstein, Malaysia, Maldives, Marshall Islands, Mauritania, Micronesia (Federated States of), Mozambique, Myanmar, Nauru, Niue, Oman, Pakistan, Palau, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Samoa, Sao Tome and Principe, Saudi Arabia, Singapore, South Africa, Swaziland, Tajikistan, Tonga, Turkey, Tuvalu, United Arab Emirates, Vanuatu.

11. As can be seen from this list, the International Covenants on Human Rights have not been ratified largely by developing countries of Asia, Africa and Latin America, many of which are less developed countries. These include both relatively new States Members of the United Nations and countries that have been Members of the Organization for many decades.

II. POSSIBLE OBSTACLES TO RATIFICATION OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

12. There are numerous obstacles to ratification of the International Covenants on Human Rights. Such obstacles vary depending on the specific political, economic, social, cultural, historical and other circumstances of the development of one or another country. They may be divided into long-term and easily removable obstacles. Removing long-term obstacles calls for concentrated efforts by the country concerned and assistance from the international community as a whole.

13. Possible long-term obstacles to ratification of the International Covenants on Human Rights must be said to include political instability in a number of the countries mentioned, the absence of democratic traditions, religious intolerance, low rates of economic growth or even recession, high unemployment, declining wages and salaries, and so on.

14. Apart from the long-term and intractable obstacles, in many countries there are causes of a more general character that can easily be addressed. These include such factors as a lack of full and reliable information about the International Covenants on Human Rights, misconceptions regarding the nature of their provisions and especially about the consequences of their ratification and the operation of the supervisory machinery. Not always justified fears about the economic burden, the political implications or difficulties of a legislative order may also stand in the way of ratification of the Covenants. Such factors can easily be addressed through broad information, awareness-raising and other activities.

III. IDENTIFYING THE OBSTACLES TO RATIFICATION OF THE COVENANTS AND SEEKING WAYS TO OVERCOME THEM

15. A seminar of States which are not parties to the Covenants should be organized and held with a view to comprehensively examining the obstacles to ratification of the Covenants and looking for ways of surmounting them. States that long ago ratified the Covenants and have positive experience in their implementation, the chairpersons or experts of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, and representatives of interested non-governmental organizations must also be invited to participate. The Sub-Commission and the Office of the High Commissioner for Human Rights should be involved in the organization and holding of such a seminar.

16. With a view to preparing for and holding a seminar of this kind, the Office of the High Commissioner for Human Rights should seek the views of the States concerned and interested non-governmental organizations, and also gather all available information about existing obstacles to effective enjoyment of the human rights and fundamental freedoms embodied in the Universal Declaration and obstacles to ratification of the Covenants, and about the measures being taken by States to remove them.

17. The holding of the seminar will help to define areas in which assistance from the United Nations may be useful for the States concerned. The seminar should result in the formulation and adoption of specific recommendations on the provision of assistance to those States in meeting their established or stated needs, including technical cooperation and advisory services, thereby contributing to observance of the fundamental rights and freedoms set forth in the Universal Declaration, as well as ratification of the International Covenants on Human Rights.

IV. ESTABLISHMENT OF A MECHANISM FOR ENCOURAGING EFFORTS BY STATES TO OBSERVE THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONTAINED IN THE UNIVERSAL DECLARATION, AND THEIR RATIFICATION OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

18. One of the aims of the proposed seminar should be to formulate agreed recommendations concerning the creation of a permanent or temporary mechanism for encouraging efforts by States to observe the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights, and their ratification of the International Covenants on Human Rights.

19. In the main working paper, the author proposed a draft resolution on the establishment of an inter-sessional working group for a period of three years (E/CN.4/Sub.2/1999/29, paras. 22-29 and annex). This working group was to be invited to request States which are not parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights to submit reports on the observance of the Universal Declaration of Human Rights and on legislative and other measures taken for its implementation and progress achieved in this respect, as well as on any factors or difficulties affecting the degree of enjoyment of the human rights and fundamental freedoms contained in the Declaration.

20. The working group, for its part, was to make recommendations to States and also set forth views concerning the provision of assistance to them in meeting established or stated needs, including technical cooperation and advisory services, which might contribute to observance of the fundamental rights and freedoms set forth in the Universal Declaration, as well as the ratification and implementation both of the International Covenants on Human Rights and of other relevant United Nations conventions in this field.

21. During the discussion of the main working paper, some members of the Sub-Commission expressed doubts about the advisability at this early stage of establishing the working group proposed by the author. It is therefore suggested that action for the time being should be limited to the holding of the above-mentioned seminar, which might successfully accomplish some of the objectives envisaged in the draft resolution of the Sub-Commission entitled "Observance of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights by States which are not parties to United Nations human rights conventions". The proposed seminar should thus deal only with specific issues concerning the observance by States of the fundamental human rights and freedoms proclaimed in the Universal Declaration, and the reasons for their non-ratification solely of the International Covenants on Human Rights. Otherwise, the work of the seminar will be overburdened with the consideration of many other matters and a successful outcome might then hardly be possible.

22. It should at the same time be borne in mind that the proposed seminar is only a first step in the consideration of issues relating to observance of the Universal Declaration of Human Rights by the States concerned and to their non-ratification of the International Covenants on Human Rights.

23. After the holding of the seminar, and depending on the recommendations adopted by it, the Sub-Commission could revert to a discussion of the question of establishing an inter-sessional working group or appointing a special rapporteur on human rights, as well as any other bodies that might be proposed.

24. It is the duty and obligation of the States Members of the United Nations to undertake all possible efforts for the observance of fundamental human rights and freedoms everywhere and for full implementation of all the provisions of the Universal Declaration of Human Rights. This will undoubtedly be facilitated by the ratification of the International Covenants on Human Rights by all States at the earliest possible time.

Notes

[1] Hurst Hannum, "The status of the Universal Declaration of Human Rights in national and international law". This article is based on a report prepared by the author as Rapporteur of the Committee on the Enforcement of International Human Rights Law of the International Law Association. Georgia Journal of International and Comparative Law, vol. 25, Nos. 1-2, pp. 287-397.

[2] For example, the Democratic People's Republic of Korea has announced its denunciation of the International Covenant on Civil and Political Rights, and Guyana has denounced the Optional Protocol to the Covenant.